IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2007

CORAM:

THE HON'BLE MR. JUSTICE S. MANIKUMAR

W.P.No.27646 of 2006

P.Savarimuthu ... Petitioner

Vs.

The Deputy Commissioner of
Police (Prohibition)
Madras City
No.3, Karumariamman Koil Street,
Nerkundram Road,
Vadapalani, Madras - 26. ... Respondent

This writ petition came to be numbered by way of transfer of O.A.No.515 of 1994 from the file of Tamil Nadu Administrative Tribunal seeking for the issuance of a writ of certiorari, to call for the records relating C.No.A1/025/94 dated 05.01.1994 of the respondent and quash the order passed therein.

For Petitioner - Mr.K.Elango

For Respondent - Mr.V.Arun,G.A.

O R D E R

The petitioner has challenged the notice dated 05.01.1994 of the Deputy Commissioner of Police (Prohibition), the respondent herein.

2. The case of the petitioner is that he was falsely implicated in a criminal case in Crime No.12/A.C./89 and during the pendency of the case before the Chief Judicial Magistrate and Sub-Judge, Chengalpattu, he was placed under suspension by order dated 15.09.1989 by the Superintendent of Police, Chengalpattu M.G.R. District. The suspension order was challenged in O.A.No.3175 of 1990 and on the strength of the interim order granted by the Tribunal, the petitioner was in continuous employment. The petitioner has further submitted that the criminal case has ended in conviction against which an appeal was filed in C.A.No.756 of 1993. While entertaining the criminal appeal, the sentence imposed by the learned Chief Judicial Magistrate, Chengalpattu in Special Case No.6 of 1991 dated

02.12.1993 was suspended and the petitioner was enlarged on bail in CMP No.9443 of 1993 dated 22.12.1993. The petitioner has further submitted that when the criminal appeal was pending on the file of this Court, the respondent has issued a Show Cause Notice, calling upon him to submit his explanation as to why he should not be dismissed from service. On receipt of the Show Cause Notice, the petitioner had informed the respondent that the criminal appeal against the judgment has been admitted, the sentence has been suspended and therefore, the respondent has no jurisdiction to issue Show Cause Notice, which is arbitrary and violative of the constitution.

3. The respondent has filed a counter affidavit and submitted that the petitioner was placed under suspension with effect from 13.09.1989 for his involvement in a Vigilance and Anti Corruption case in Cr.No.12/AC/89 MC.I under Section 8 of PC Act, 1988. He was found guilty under Section 7 and 13(2) read with Section 13(1)(d) of PC Act and was convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.300/- by the Chief Judicial Magistrate, Chengalpattu on 02.12.1993 in C.C.No.6 of 1991. This court released the petitioner on bail, subject to the condition to report before the Chief Judicial Magistrate, Chengalpattu daily at 10.00 a.m.

4. It is further submitted that as per Rule 3(c)(i)(1) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, a Show Cause Notice has to be issued in a case warranting severe penalty, namely, dismissal and therefore, the petitioner was served with the Show Cause Notice and directed to offer his explanation. The respondent has further submitted that the Writ petition filed against the Show Cause Notice is not maintainable. The plea of suspension of conviction is not correct and therefore, prayed for dismissal of the writ petition.

5. It is evident from the pleadings of the petitioner that he was convicted for a serious offence under Section 7 and 13(2) read with Section 13(1)(d) of PC Act and was convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.300/-.

6. Rule 3(c)(i)(1) reads as follows:

> "The requirements of sub-rule(b) shall not apply where it is proposed to impose on a member of the Service any such penalty as is referred to in clause (i) of that sub-rule on the basis of facts which have led to his conviction in a criminal Court (whether or not he has been sentenced at once by such Court to any punishment), but he shall be given a reasonable opportunity of making any representation."

7. The Supreme Court in Deputy Director of Collegiate Education (Admn) V. S.Nagoor Meera (1995) 3 SCC 377 at paragraph Nos.7 and 8 has held as follows:

> 7. This clause, it is relevant to notice, speaks of "conduct which has led his conviction on a criminal charge". It does not speak of sentence or punishment awarded. Merely because the sentence is suspended and/or the accused is released on bail, the conviction does not cease to be operative. Section 389 of the Code of Criminal Procedure, 1973 empowers the appellate court to order that pending the appeal "the execution of the sentence or order appealed against the suspended and, also, if he is in confinement, that he be released on bail, or on his own bond". Section 389(1), it may be noted, speaks of suspending "the execution of the sentence or order", it does not expressly speak of suspending "the execution of the sentence or order", it does not expressly speak of suspension of conviction. In the above reported judgment, the Supreme Court has extracted paragraph Nos.15 and 16 of the Judgment rendered earlier in Rama Narang v. Ramesh Narang reported in 1995 2 SCC 513 and are reproduced hereunder:-
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> Paragraphs 15 and 16
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> "Section 389(1) empowers the Appellate Court to order that the execution of the sentence or order appealed against be suspended pending the appeal. What can be suspended under this provision is the execution of the sentence or the execution of the order. Does 'order' in Section 389(1) mean order of conviction or an order similar to the one under Section 357 or Section 360 of the Code? Obviously the order referred to in Section 389(1) must be an order capable of execution. An order of conviction by itself is not capable of execution under the Code. It is the order of sentence or an order awarding compensation or imposing fine or release on probation which are capable of execution and which, if not suspended, would be required to be executed by the authorities".
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> In certain situations the order of conviction can be executable, in the sense, it may incur a disqualification as in the instant case. In such a case the power under Section 389(1) of the Code could be invoked. In such situations the attention of the Appellate Court must be specifically invited to the consequence that is likely to fall to enable it to apply its mind to the issue since under Section 389(1) it is under an obligation to support

its order 'for reasons to be recorded by it in writing'. It the attention of the Court is not invited to this specific consequence which is likely to fall upon conviction how can it be expected to assign reasons relevant thereto?... If such a precise request was made to the Court pointing out the consequences likely to fall on the continuance of the conviction order, the Court would have applied its mind to the specific question and if it thought that case was made out for grant of interim stay of the conviction order, with or without conditions attached thereto, it may have granted an order to that effect."

8. We need not, however, concern ourselves any more with the power of the appellate court under the Code of Criminal Procedure for the reason that what is relevant for clause(a) of the second proviso to Article 311(2) is the "conduct which has led to his conviction on a criminal charge" and there can be no question of suspending the conduct. We are therefore, of the opinion that taking proceedings for and passing orders of dismissal, removal or reduction in rank of a government servant who has been convicted by a criminal court is not barred merely because the sentence or order is suspended by the appellate court or on the ground that the said government servant-accused has been released on bail pending the appeal."

8. The Supreme Court went on to say that the appropriate course in all such cases of conviction and suspension of sentence is to take action under clause (a) of the second proviso to Article 311(2), once a government servant is convicted of a criminal charge and not to wait for the appeal or revision,as the case may be. To keep the Government servant in service till the disposal of the appeal, revision and other remedies are over, would not be advisable, since it would be amounting to continuing a person who has been convicted of a serious offence by a criminal court, in service.

9. At paragraph 10 of S.Nagoor Meera's case, the Supreme Court held as follows:

"What is really relevant thus is the conduct of the government servant which has led to his conviction on a criminal charge. Now, in this case, the respondent has been found guilty of corruption by a criminal court. Until the said conviction is set aside by the appellate or other higher court, it may not be advisable to retain such person in service. As stated above, if he succeeds in appeal or other proceedings, the matter can always be reviewed in such a manner that he suffers no prejudice."

10. In Union of India and Others Vs. Rameshkumar (1997) 7 SCC 514, the Supreme Court considered another case of conviction of a government servant charged for receiving illegal gratification.

11. At paragraph No.6 of the Judgment, the Supreme Court held that under Rule 19 of CCS (CCA) Rules, 1965, the disciplinary authority is empowered to take action against a government servant on the ground of misconduct which has led to his conviction on a criminal charge. The rules, however, do not provide that on suspension of execution of sentence by the appellate court, the order of dismissal based on conviction stands obliterated and the dismissed government servant has to be treated under suspension till disposal of appeal by the appellate court. The rules also do not provide the disciplinary authority to await disposal of the appeal by the appellate court filed by a government servant for taking action against him on the ground of misconduct which has led to his conviction by a competent court of law. Having regard to the provisions of the rules, the order dismissing the respondent from service on the ground of misconduct leading to his conviction by a competent court of law has not lost its sting merely because a criminal appeal was filed by the respondent against his conviction and the appellate court has suspended the execution of sentence and enlarge the respondent on bail.

12. Law is well defined that Section 389 of the Code of Criminal Procedure, 1973 empowers the appellate court to order suspension of the execution of the sentence awarded by the trial court and does not speak of suspension of conviction or the punishment awarded. Once the government servant is convicted of a criminal charge, the disciplinary authority need not wait for the disposal of the appeal or the revision, as the case may be. Clause (a) of the second proviso to Article 311(2) of the Constitution of India is attracted when the conduct of the government servant which led to his conviction is under question. It is the prerogative of the appointing authority to take appropriate disciplinary action against the government servant who has been convicted for an offence and retention of a person, who has been convicted for offence of corruption would be scandalous to the department. Corruption is like a cancer in the body. Unless it is cut and removed, the whole system will be affected. As held by the Supreme Court, taking proceedings for inflicting major penalties of dismissal, removal or compulsory retirement or reduction in rank of a government servant who has been convicted by a criminal court is not barred merely because, the sentence or order is suspended by the appellate court or on the ground that the government servant has been released on bail, pending appeal.

13. Therefore, the impugned Show Cause Notice issued by the disciplinary authority under Rule 3(c)(i)(1) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules does not warrant any interference. There are no merits in the writ petition. Hence the same is dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

svki

To

The Deputy Commissioner of
Police (Prohibition)
Madras City
No.3, Karumariamman Koil Street,
Nerkundram Road,
Vadapalani, Madras - 26.

W.P.No.27646 of 2006

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TP/25.6.08.